

CHAPTER 141A ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

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141A.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. *"AIDS"* means acquired immune deficiency syndrome as defined by the centers for disease control and prevention of the United States department of health and human services.
2. *"AIDS-related conditions"* means any condition resulting from the human immunodeficiency virus infection that meets the definition of AIDS as established by the centers for disease control and prevention of the United States department of health and human services.
3. *"Blinded epidemiological studies"* means studies in which specimens which were collected for other purposes are selected according to established criteria, are permanently stripped of personal identifiers, and are then tested.
4. *"Blood bank"* means a facility for the collection, processing, or storage of human blood or blood derivatives, including blood plasma, or from which or by means of which human blood or blood derivatives are distributed or otherwise made available.
5. *"Care provider"* means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual's official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in section 147A.1, fire fighter, or peace officer. *"Care provider"* also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in section 613.17.
6. *"Department"* means the Iowa department of public health.
7. *"Good faith"* means objectively reasonable and not in violation of clearly established statutory rights or other rights of a person which a reasonable person would know or should have known.
8. *"Health care provider"* means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing, dentistry, or optometry, or as a physician assistant, dental hygienist, or acupuncturist.
9. *"Health facility"* means a hospital, health care facility, clinic, blood bank, blood center, sperm bank, laboratory organ transplant center and procurement agency, or other health care institution.

10. "*HIV*" means the human immunodeficiency virus identified as the causative agent of AIDS.
11. "*HIV-related condition*" means any condition resulting from the human immunodeficiency virus infection.
12. "*HIV-related test*" means a diagnostic test conducted by a laboratory approved pursuant to the federal Clinical Laboratory Improvement Amendments for determining the presence of HIV or antibodies to HIV.
13. "*Infectious bodily fluids*" means bodily fluids capable of transmitting HIV infection as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.
14. "*Legal guardian*" means a person appointed by a court pursuant to chapter 633 or an attorney in fact as defined in section 144B.1. In the case of a minor, "*legal guardian*" also means a parent or other person responsible for the care of the minor.
15. "*Nonblinded epidemiological studies*" means studies in which specimens are collected for the express purpose of testing for the HIV infection and persons included in the nonblinded study are selected according to established criteria.
16. "*Release of test results*" means a written authorization for disclosure of HIV-related test results which is signed and dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.
17. "*Sample*" means a human specimen obtained for the purpose of conducting an HIV-related test.
18. "*Significant exposure*" means the risk of contracting HIV infection by means of exposure to a person's infectious bodily fluids in a manner capable of transmitting HIV infection as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

141A.2 LEAD AGENCY.

1. The department is designated as the lead agency in the coordination and implementation of the Iowa comprehensive HIV plan.
2. The department shall adopt rules pursuant to chapter 17A to implement and enforce this chapter. The rules may include procedures for taking appropriate action with regard to health facilities or health care providers which violate this chapter or the rules adopted pursuant to this chapter.
3. The department shall adopt rules pursuant to chapter 17A which require that if a health care provider attending a person prior to the person's death determines that the person suffered from or was suspected of suffering from a contagious or infectious disease, the health care provider shall place with the remains written notification of the condition for the information of any person handling the body of the deceased person subsequent to the person's death. For purposes of this subsection, "*contagious or infectious disease*" means hepatitis in any form, meningococcal disease, tuberculosis, and any other disease including AIDS or HIV infection, determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.
4. The department shall provide consultation services to all care providers, including paramedics, ambulance personnel, physicians, nurses, hospital personnel, first

responders, peace officers, and fire fighters, who provide care services to a person, and to all persons who attend dead bodies regarding standard precautions to prevent the transmission of contagious and infectious diseases.

5. The department shall coordinate efforts with local health officers to investigate sources of HIV infection and use every appropriate means to prevent the spread of the infection.

6. The department, with the approval of the state board of health, may conduct epidemiological blinded and nonblinded studies to determine the incidence and prevalence of HIV infection. Initiation of any new epidemiological studies shall be contingent upon the receipt of funding sufficient to cover all the costs associated with the studies. The informed consent, reporting, and counseling requirements of this chapter shall not apply to blinded studies.

141A.3 DUTIES OF THE DEPARTMENT.

1. All federal and state moneys appropriated to the department for HIV-related activities shall be utilized and distributed in a manner consistent with the guidelines established by the United States department of health and human services.

2. The department shall do all of the following:

a. Provide consultation services to agencies and organizations regarding appropriate policies for testing, education, confidentiality, and infection control.

b. Provide health information to the public regarding HIV infection, including information about how the infection is transmitted and how transmittal can be prevented. The department shall prepare and distribute information regarding HIV infection and prevention.

c. Provide consultation services concerning HIV infection in the workplace.

d. Implement HIV education risk-reduction programs for specific populations at high risk for infection.

e. Provide an informational brochure for patients who provide samples for purposes of performing an HIV test which, at a minimum, shall include a summary of the patient's rights and responsibilities under the law.

f. In cooperation with the department of education, recommend evidence-based, medically accurate HIV prevention curricula for use at the discretion of secondary and middle schools.

141A.4 TESTING AND EDUCATION.

1. HIV testing and education shall be offered to persons who are at risk for HIV infection including all of the following:

a. All persons testing positive for a sexually transmitted disease.

b. All persons having a history of injecting drug abuse.

c. Male and female sex workers and those who trade sex for drugs, money, or favors.

d. Sexual partners of HIV-infected persons.

e. Persons whose sexual partners are identified in paragraphs "a" through "d".

2. *a.* All pregnant women shall be tested for HIV infection as part of the routine panel of prenatal tests.

b. A pregnant woman shall be notified that HIV screening is recommended for all prenatal patients and that the pregnant woman will receive an HIV test as part of the routine panel of prenatal tests unless the pregnant woman objects to the test.

- c.* If a pregnant woman objects to and declines the test, the decision shall be documented in the pregnant woman's medical record.
- d.* Information about HIV prevention, risk reduction, and treatment opportunities to reduce the possible transmission of HIV to a fetus shall be made available to all pregnant women.

141A.5 PARTNER NOTIFICATION PROGRAM -- HIV.

1. The department shall maintain a partner notification program for persons known to have tested positive for HIV infection.
2. In administering the program, the department shall provide for the following:
 - a.* A person who tests positive for HIV infection shall receive post-test counseling, during which time the person shall be encouraged to refer for counseling and HIV testing any person with whom the person has had sexual relations or has shared drug injecting equipment.
 - b.* The physician or other health care provider attending the person may provide to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment.
 - c.* (1) Devise a procedure, as a part of the partner notification program, to provide for the notification of an identifiable third party who is a sexual partner of or who shares drug injecting equipment with a person who has tested positive for HIV, by the department or a physician, when all of the following situations exist:
 - (a) A physician for the infected person is of the good faith opinion that the nature of the continuing contact poses an imminent danger of HIV infection transmission to the third party.
 - (b) When the physician believes in good faith that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.
 - (2) Notwithstanding subsection 3, the department or a physician may reveal the identity of a person who has tested positive for HIV infection pursuant to this subsection only to the extent necessary to protect a third party from the direct threat of transmission. This subsection shall not be interpreted to create a duty to warn third parties of the danger of exposure to HIV through contact with a person who tests positive for HIV infection.
 - (3) The department shall adopt rules pursuant to chapter 17A to implement this paragraph "c". The rules shall provide a detailed procedure by which the department or a physician may directly notify an endangered third party.
3. In making contact the department shall not disclose the identity of the person who provided the names of the persons to be contacted and shall protect the confidentiality of persons contacted.
4. The department may delegate its partner notification duties under this section to local health authorities unless the local authority refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.
5. In addition to the provisions for partner notification provided under this section and notwithstanding any provision to the contrary, a county medical examiner or deputy medical examiner performing official duties pursuant to sections 331.801 through 331.805 or the state medical examiner or deputy medical examiner performing official duties pursuant to chapter 691, who determines through an investigation that a deceased person was infected with HIV, may notify directly, or request that the

department notify, the immediate family of the deceased or any person known to have had a significant exposure from the deceased of the finding.

141A.6 HIV-RELATED CONDITIONS -- CONSENT, TESTING, AND REPORTING -- PENALTY.

1. Prior to undergoing an HIV-related test, information shall be available to the subject of the test concerning testing and any means of obtaining additional information regarding HIV infection and risk reduction. If an individual signs a general consent form for the performance of medical tests or procedures, the signing of an additional consent form for the specific purpose of consenting to an HIV-related test is not required during the time in which the general consent form is in effect. If an individual has not signed a general consent form for the performance of medical tests and procedures or the consent form is no longer in effect, a health care provider shall obtain oral or written consent prior to performing an HIV-related test. If an individual is unable to provide consent, the individual's legal guardian may provide consent. If the individual's legal guardian cannot be located or is unavailable, a health care provider may authorize the test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.
2. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology or immediately after the initial examination or treatment of an individual infected with HIV, the physician or other health care provider at whose request the test was performed or who performed the initial examination or treatment shall make a report to the department on a form provided by the department.
3. Within seven days of diagnosing a person as having AIDS or an AIDS-related condition, the diagnosing physician shall make a report to the department on a form provided by the department.
4. Within seven days of the death of a person with HIV infection, the attending physician shall make a report to the department on a form provided by the department.
5. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology, the director of a blood bank shall make a report to the department on a form provided by the department.
6. Within seven days of the receipt of a test result that is indicative of HIV, the director of a clinical laboratory shall make a report to the department on a form provided by the department.
7. The forms provided by the department shall require inclusion of all of the following information:
 - a. The name of the patient.
 - b. The address of the patient.
 - c. The patient's date of birth.
 - d. The gender of the patient.
 - e. The race and ethnicity of the patient.
 - f. The patient's marital status.
 - g. The patient's telephone number.
 - h. If an HIV-related test was performed, the name and address of the laboratory or blood bank.

- i.* If an HIV-related test was performed, the date the test was found to be positive and the collection date.
 - j.* If an HIV-related test was performed, the name of the physician or health care provider who performed the test.
 - k.* If the patient is female, whether the patient is pregnant.
8. An individual who repeatedly fails to file the report required under this section is subject to a report being made to the licensing board governing the professional activities of the individual. The department shall notify the individual each time the department determines that the individual has failed to file a required report. The department shall inform the individual in the notification that the individual may provide information to the department to explain or dispute the failure to report.
9. A public, private, or hospital clinical laboratory that repeatedly fails to make the report required under this section is subject to a civil penalty of not more than one thousand dollars per occurrence. The department shall not impose the penalty under this subsection without prior written notice and opportunity for hearing.

141A.7 TEST RESULTS -- COUNSELING -- APPLICATION FOR SERVICES.

1. At any time that the subject of an HIV-related test is informed of confirmed positive test results, counseling concerning the emotional and physical health effects shall be initiated. Particular attention shall be given to explaining the need for the precautions necessary to avoid transmitting the virus. The subject shall be given information concerning additional counseling. If the legal guardian of the subject of the test provides consent to the test pursuant to section 141A.6, the provisions of this subsection shall apply to the legal guardian.
2. Notwithstanding subsection 1, the provisions of this section do not apply to any of the following:
 - a.* The performance by a health care provider or health facility of an HIV-related test when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the revised uniform anatomical gift Act as provided in chapter 142C, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of blood, and such test is necessary to ensure medical acceptability of such gift or semen for the purposes intended.
 - b.* A person engaged in the business of insurance who is subject to section 505.16.
 - c.* The performance by a health care provider or health facility of an HIV-related test when the subject of the test is deceased and a documented significant exposure has occurred.
 - d.* The performance by a health care provider or health facility of an HIV-related test when the subject of the test is unable to provide consent and the health care provider or health care facility provides consent for the patient pursuant to section 141A.6.
3. A person may apply for voluntary treatment, contraceptive services, or screening or treatment for HIV infection and other sexually transmitted diseases directly to a licensed physician and surgeon, an osteopathic physician and surgeon, or a family planning clinic. Notwithstanding any other provision of law, however, a minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to assist minors and legal guardians with the notification process which emphasizes the

need for family support and assists in making available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or centers for disease control and prevention guidelines from informing the legal guardian is exempt from the notification requirement. The minor shall give written consent to these procedures and to receive the services, screening, or treatment. Such consent is not subject to later disaffirmance by reason of minority.

141A.8 CARE PROVIDER NOTIFICATION.

1. *a.* Notwithstanding any provision of this chapter to the contrary, if a care provider sustains a significant exposure from an individual, the individual to whom the care provider was exposed is deemed to consent to a test to determine the presence of HIV infection in that individual and is deemed to consent to notification of the care provider of the HIV test results of the individual, upon submission of a significant exposure report by the care provider as provided by rule.

b. The hospital or clinic in which the exposure occurred or any other person specified in this section to whom the individual is delivered shall conduct the test. If the individual is delivered by the care provider to an institution administered by the Iowa department of corrections, the test shall be conducted by the staff physician of the institution. If the individual is delivered by the care provider to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. The sample and test results shall only be identified by a number.

c. A hospital, institutions administered by the department of corrections, and jails shall have written policies and procedures for notification of a care provider under this section. The policies and procedures shall include designation of a representative of the care provider to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the individual tested. The designated representative shall inform the hospital, institution administered by the department of corrections, or jail of those parties who received the notification, and following receipt of this information and upon request of the individual tested, the hospital, institution administered by the department of corrections, or jail shall inform the individual of the parties to whom notification was provided.

2. *a.* If the test results are positive, the hospital or other person performing the test shall notify the subject of the test and ensure the performance of counseling and reporting requirements of this chapter in the same manner as for an individual from whom actual consent was obtained. The report to the department required pursuant to section 141A.6 shall include the name of the individual tested.

b. If the HIV test results of the subject of the test are positive, the hospital or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider who sustained the exposure.

c. The notification shall be provided as soon as is reasonably possible following determination that the HIV test results of the subject of the test are positive. The notification shall not include the name of the individual tested for HIV infection unless the individual provides a specific written release. If the care provider who sustained the significant exposure determines the identity of the individual tested, the identity of the individual shall be confidential information and shall not be disclosed by the care

provider to any other person unless a specific written release is obtained from the individual tested.

3. This section does not preclude a hospital or health care provider from providing notification to a care provider under circumstances in which the hospital's or health care provider's policy provides for notification of the hospital's or health care provider's own employees of exposure to HIV infection if the notice does not reveal a patient's name, unless the patient consents.

4. A hospital, health care provider, or other person participating in good faith in making a report under the notification provisions of this section, under procedures similar to this section for notification of its own employees upon filing of a significant exposure report, or in failing to make a report under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

5. A hospital's or health care provider's duty to notify under this section is not continuing but is limited to the diagnosis of HIV infection made in the course of admission, care, and treatment following the rendering of health care services or other services to the individual with the infection to which notification under this section applies.

6. Notwithstanding subsection 5, if, following discharge from or completion of care or treatment by a hospital, an individual for whom a significant exposure report was submitted but which report did not result in notification, wishes to provide information regarding the individual's HIV infection status to the care provider who submitted the report, the hospital shall provide a procedure for notifying the care provider.

7. A hospital, health care provider, or other person who is authorized to perform an HIV test under this section, who performs the HIV test in compliance with this section or who fails to perform an HIV test authorized under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

8. A hospital, health care provider, or other person who is authorized to perform a test under this section has no duty to perform the HIV test authorized.

9. The employer of a care provider who sustained a significant exposure under this section shall pay the costs of HIV testing for the individual who is the source of the significant exposure and of the testing and counseling of the care provider, if the significant exposure was sustained during the course of employment. However, the department shall assist an individual who is the source of the significant exposure in finding resources to pay for the cost of the HIV test, and shall assist a care provider who renders direct aid without compensation in finding resources to pay for the cost of the testing and counseling.

141A.9 CONFIDENTIALITY OF INFORMATION.

1. Any information, including reports and records, obtained, submitted, and maintained pursuant to this chapter is strictly confidential medical information. The information shall not be released, shared with an agency or institution, or made public upon subpoena, search warrant, discovery proceedings, or by any other means except as provided in this chapter. A person shall not be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to persons entitled to that information under this chapter.

2. HIV-related test results shall be made available for release to the following individuals or under the following circumstances:

- a.* To the subject of the test or the subject's legal guardian subject to the provisions of section 141A.7, subsection 3, when applicable.
- b.* To any person who secures a written release of test results executed by the subject of the test or the subject's legal guardian.
- c.* To an authorized agent or employee of a health facility or health care provider, if the health facility or health care provider ordered or participated in the testing or is otherwise authorized to obtain the test results, the agent or employee provides patient care or handles or processes samples, and the agent or employee has a medical need to know such information.
- d.* To a health care provider providing care to the subject of the test when knowledge of the test results is necessary to provide care or treatment.
- e.* To the department in accordance with reporting requirements for an HIV-related condition.
- f.* To a health facility or health care provider which procures, processes, distributes, or uses a human body part from a deceased person with respect to medical information regarding that person, or semen provided prior to July 1, 1988, for the purpose of artificial insemination.
- g.* To a person allowed access to an HIV-related test result by a court order which is issued in compliance with the following provisions:
 - (1) A court has found that the person seeking the test results has demonstrated a compelling need for the test results which need cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure due to its deterrent effect on future testing or due to its effect in leading to discrimination.
 - (2) Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially in documents not filed with the court.
 - (3) Before granting an order, the court shall provide the person whose test results are in question with notice and a reasonable opportunity to participate in the proceedings if the person is not already a party.
 - (4) Court proceedings as to disclosure of test results shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.
 - (5) Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may gain access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.
- h.* To an employer, if the test is authorized to be required under any other provision of law.
- i.* Pursuant to section 915.43, to a convicted or alleged sexual assault offender; the physician or other health care provider who orders the test of a convicted or alleged offender; the victim; the parent, guardian, or custodian of the victim if the victim is a minor; the physician of the victim if requested by the victim; the victim counselor or person requested by the victim to provide counseling regarding the HIV-related test and results; the victim's spouse; persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault; members of the victim's family

within the third degree of consanguinity; and the county attorney who may use the results as evidence in the prosecution of sexual assault under chapter 915, subchapter IV, or prosecution of the offense of criminal transmission of HIV under chapter 709C. For the purposes of this paragraph, "*victim*" means victim as defined in section 915.40.

j. To employees of state correctional institutions subject to the jurisdiction of the department of corrections, employees of secure facilities for juveniles subject to the department of human services, and employees of city and county jails, if the employees have direct supervision over inmates of those facilities or institutions in the exercise of the duties prescribed pursuant to section 80.9B.

3. Release may be made of medical or epidemiological information for statistical purposes in a manner such that no individual person can be identified.

4. Release may be made of medical or epidemiological information to the extent necessary to enforce the provisions of this chapter and related rules concerning the treatment, control, and investigation of HIV infection by public health officials.

5. Release may be made of medical or epidemiological information to medical personnel to the extent necessary to protect the health or life of the named party.

6. Release may be made of test results concerning a patient pursuant to procedures established under section 141A.5, subsection 2, paragraph "c".

7. Medical information secured pursuant to subsection 1 may be shared between employees of the department who shall use the information collected only for the purposes of carrying out their official duties in preventing the spread of the disease or the spread of other reportable diseases as defined in section 139A.2.

141A.10 IMMUNITIES.

1. A person making a report in good faith pursuant to this chapter is immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report.

2. A health care provider attending a person who tests positive for the HIV infection has no duty to disclose to or to warn third parties of the dangers of exposure to HIV infection through contact with that person and is immune from any liability, civil or criminal, for failure to disclose to or warn third parties of the condition of that person.

141A.11 REMEDIES.

1. A person aggrieved by a violation of this chapter shall have a right of civil action for damages in district court.

2. A care provider who intentionally or recklessly makes an unauthorized disclosure under this chapter is subject to a civil penalty of one thousand dollars.

3. A person who violates a confidentiality requirement of section 141A.5 is guilty of an aggravated misdemeanor.

4. A civil action under this chapter is barred unless the action is commenced within two years after the cause of action accrues.

5. The attorney general may maintain a civil action to enforce this chapter.

6. This chapter does not limit the rights of the subject of an HIV-related test to recover damages or other relief under any other applicable law.

7. This chapter shall not be construed to impose civil liability or criminal sanctions for disclosure of HIV-related test results in accordance with any reporting requirement for a diagnosed case of AIDS or a related condition by the department or the centers for

disease control and prevention of the United States department of health and human services.